



December 4, 2014
Review of 2014 General Election Results
For Boulder County:

This report arises out of the Boulder County Clerk and Recorder's submission of uncertified election returns to the Colorado Secretary of State. The Boulder County Canvass Board, which includes members from each major party and the Boulder County Clerk, is responsible for certifying the abstract of votes cast in Boulder County.¹ The majority of the Board voted to not certify the abstract.

The Clerk and Recorder submitted the uncertified abstract to the Secretary of State, along with the information and data she had provided the Canvass Board. Boulder County also submitted the Canvass Board's non-certification report, in which the Board listed its reasons for refusing to certify the abstract.

Under Colorado law, the Secretary may accept an uncertified abstract for inclusion in the official statewide results, if the returns are "sufficiently explicit in showing how many votes were cast for each candidate, ballot question, or ballot issue." As a result of the Canvass Board's non-certification, the Secretary of State conducted its own investigation to determine whether the Secretary should accept Boulder County's election results for state and federal offices.

Following the investigation, the Secretary will accept the Boulder County's uncertified abstract because the returns are sufficiently explicit. This acceptance only applies to offices and issues of statewide concern, such as statewide state and federal races, legislative races, and statewide ballot issues. At the same time the investigation, along with other observation, reveal that the Boulder Clerk committed serious and systematic violations of Colorado state law. These violations involve election judge selection, signature verification procedures, and watcher access.

This report outlines the reasons the Secretary of State is accepting Boulder County's results and identifies the Clerk and Recorder's violations of state laws and regulations.

I. THE SECRETARY OF STATE WILL ACCEPT BOULDER COUNTY'S GENERAL ELECTION RESULTS BECAUSE THE RETURNS ARE SUFFICIENTLY EXPLICIT TO DETERMINE THE NUMBER OF VOTES CAST.

Under Colorado law, a canvass board has three duties: (1) It must reconcile the ballots cast in the election to confirm that the number of ballots counted in the election does not exceed

¹ Section 1-10-101.5(1)(c), C.R.S.

the number of ballots cast; (2) it must reconcile the ballots cast in each precinct in the county to confirm that the number of ballots cast does not exceed the number of registered electors in the precinct; and (3) it must vote to certify or not certify the abstract and transmit the abstract to the Secretary of State.²

According to its report, the Boulder County Canvass Board did not certify the 2014 general election results for the following reasons:

1. Boulder County did not provide the Board with enough information and data to complete its duties;
2. The Board did not receive the data it needed in an acceptable format or with sufficient time to review it;
3. The Board considered Boulder's signature verification process to be "bogus;" and
4. The Board was unsatisfied with Boulder County's daily ballot reconciliation process and chain-of-custody for ballots transferred from voter service and polling centers to the County's main office.

Under Colorado law, if the returns do not conform to legal requirement, the Secretary will nonetheless accept county results if he finds that the returns "are sufficiently explicit in showing how many votes were cast for each candidate, ballot question, or ballot issue."³

The Secretary of State staff reviewed all of the electronic information and data that the Clerk provided to the Board. Further, on December 2, 2014, two members visited Boulder County to review ballot-reconciliation procedures and chain-of-custody logs. Clerk and Recorder staff cooperated in this review and provided all requested information. Based on the information provided to the Secretary of State's office, the Secretary has determined that the returns "are sufficiently explicit in showing how many votes were cast for each candidate, ballot questions, or ballot issue." Boulder County's returns will be included in the official statewide results.

With respect to the specific concerns raised by the Canvass Board, the Secretary has determined:

1. The Clerk provided the Canvass Board with the minimum amount of information required by state laws and rules.
2. The Clerk did not provide sufficient time to allow the Canvass Board to complete its duties. The Clerk unreasonably chose to hold the canvass late Friday afternoon on the last possible day under the statute—a decision that prevented any discussion between members of the Board and the Clerk about the specific information the Board would consider sufficient to certify.

² Section 1-10-101.5, C.R.S.

³ Under section 1-10-104(1), C.R.S., if the Secretary of State finds "that the method of making or certifying returns from any precinct, county, or district does not conform to the requirements of law, the returns shall nevertheless be canvassed if they are sufficiently explicit in showing how many votes were cast for each candidate, ballot question, or ballot issue."

3. The signature verification process, while deficient under state law, falls outside the Canvass Board's purview.
4. The reconciliation process and chain-of-custody issues fall outside of the Canvass Board's purview.⁴

Unfortunately, the Boulder County Clerk and Recorder remains the only Clerk (out of 64 County Clerks) who failed to submit certified election results to the Secretary of State. Indeed, **the Boulder County Clerk has failed to submit certified election results three elections in a row,** whereas every other county clerk has successfully submitted certified results in the past three elections.

Accordingly, the Secretary believes that the Boulder County Clerk can obtain certified results in the future by adopting practices followed by other county clerks. This includes cooperating with canvass board members, county party leadership, and watchers during and after the election. Most importantly, it means following state law, as outlined below. Unfortunately, Boulder's decision to take the same approach it has taken over the past two elections, rather than work toward resolving recurring issues, has led to an unnecessary non-certification.

II. THE BOULDER COUNTY CLERK AND RECORDER SYSTEMATICALLY VIOLATED COLORADO STATE LAW DURING THE 2014 GENERAL ELECTION.

In the time leading up to the 2014 general election, the Secretary of State's Office received numerous reports of ballot-processing violations and irregularities at the Boulder County Clerk's Office. In furtherance of his duty to supervise elections in Colorado, the Secretary sent staff to the Boulder Elections office to investigate and observe the conduct of the election.⁵ Finally, Secretary of State staff investigated Boulder County's processes after the failure of the Canvass Board to certify results. Following these multiple observations and investigations, the Secretary has determined that the Boulder County Clerk and Recorder violated state law by:

- Illegally appointing election judges;
- Illegally limiting watcher access to signature verification;
- Improperly concealing and limiting watcher access to the vote tally area;
- Improperly limiting Secretary of State staff access to ballot processing;
- Treating election judges and watchers in a biased and inconsistent manner;
- Illegally failing to verify signatures on ballots electronically submitted by military and overseas voters.

A. Boulder County illegally ignored the Republican Party's list of recommended election judges and instead recruited and retained their own judges.

1. *The Boulder County Clerk ignored the legal requirements and procedures for appointing election judges.*

⁴ The Secretary addresses his concerns about Boulder's signature verification process in a different part of this report.

⁵ Section 1-1-107 (1) (a), C.R.S. (2014).

Colorado statutory law governs the appointment of election judges.⁶ First, a major party county chairperson may submit a list of registered electors to serve as election judges to the county.⁷ The county clerk then appoints the necessary number of election judges from the chairpersons' lists in the order requested by the chairperson.⁸ The county clerk may only appoint from minor party lists and unaffiliated voters when the major parties' lists "contain an insufficient number of names for a major party's share of the total number of election judges".⁹ After appointing judges from the lists, the clerk must confirm the appointments by mailing the appointed election judges a certification of appointment and an acceptance form.¹⁰ If an appointed judge does not return the acceptance form within seven days a vacancy is created, then the county clerk must fill the vacancy with someone from the list of names submitted by the party chairperson.¹¹

As explained below, the Boulder County Clerk completely ignored this statutory process. Indeed, the Boulder County Clerk's staff members were completely unaware of these statutory requirements. This is particularly shocking, since the Boulder County Clerk has held office for nearly eight years.

2. *Boulder County violated state law by refusing to hire Republican election judges submitted by the county party.*

The week before the election, the Secretary of State's Office was contacted by Ellyn Hilliard, the chairperson of the Republican Party in Boulder County, who claimed that Boulder County election staff had failed to hire a sufficient number of Republican judges, had failed to hire Republican judges from the list she submitted, and had hired people to fill Republican judge positions who had recently changed their affiliation from Democratic to Republican or Democratic to Unaffiliated. Hilliard reported that, at that point, only five Republican judges, out of well over 200 judges, had been hired in Boulder County, even though Hilliard had submitted a list of 95 names. Of note, none of the judges on Hilliard's list were assigned to the central count facility where sensitive tasks such as signature verification, tabulation and ballot resolution were performed.

The Secretary of State's Office took Hilliard's allegations very seriously. Staff immediately began an investigation and contacted Molly Tayer, the county elections director. Initial research confirmed Ms. Hilliard's allegations; first, the County Clerk had indeed failed to hire a sufficient number of Republican judges; failed to appoint judges from the list provided by the Republican Party County Chairperson; and instead used a temporary staffing agency to recruit and hire election judges.

⁶ Article 6 of title 1, C.R.S.

⁷ Section 1-6-103 C.R.S. (2014).

⁸ Section 1-6-104(1) C.R.S. (2014).

⁹ Section 1-6-104(3) C.R.S. (2014); each major party's share is roughly half of the total number of election judges under 1-6-109 C.R.S. (2014).

¹⁰ Section 1-6-106(1) C.R.S. (2014).

¹¹ Sections 1-6-106(3), 1-6-113(1) C.R.S. (2014).

Election Director Tayer admitted that Boulder County did not appoint judges from the lists submitted by the parties as required by law. Indeed, although the Clerk received the names from the county chair, the Clerk never sent Certifications of Appointment and Acceptance forms. Instead, the Clerk tried to contact the people on the lists by email and, rather than appointing them as required by state law, instead invited them to an “Election Worker Career Day” event where they could apply and interview for election judge positions. Some potential election judges reported that Clerk staff communicated seemingly inflexible and demanding work requirements (such as regular 14 hour days, and a requirement that judges always remain on call, with a 30 minute response time, during early voting and election day.) In other instances, Clerk staff administered typing tests, and Republicans who were failed the tests were not informed of the failure and were not invited to serve as election judges.

After the “Career Day,” election staff failed to fill vacancies according to state law. Instead of directly communicating with Ms. Hilliard, the Clerk instead tried to supplement the low number of Republican judges by advertising election judge positions through email, flyers, and contracting with a temporary employment agency. In sum, Boulder’s election judge hiring process completely contravened the law.

Secretary of State staff also uncovered numerous irregularities with the affiliations of judges. This included:

1. Judges identified by the Clerk as Republican or Unaffiliated were not registered electors, and Secretary of State staff could not find them in the statewide voter database.
2. Judges identified by the Clerk as Republican were instead registered Unaffiliated or Democrat.
3. Judges identified by the Clerk as Republican or Unaffiliated had changed their affiliations in the days leading up to the election.
4. Perhaps most troubling, one judge had been previously flagged as a potential noncitizen, and the Boulder Clerk did nothing to investigate this potential problem. Instead the temporary staffing agency encouraged her to register to vote, a requirement of an election judge.

None of these irregularities applied to Democratic election judges. And none of these irregularities would have happened had Boulder followed the statutory procedure for appointing election judges.

Rather than immediately halting all election operations in Boulder, the Secretary of State’s Office attempted to work with Boulder County and the Boulder County Republican Party Chair to solve the problem. Accordingly, Ms. Hilliard resubmitted a list of recommended voters to serve as Republican judges.

On Election Day, the Boulder Clerk told staff that the election judge list had been updated. Secretary of State staff requested the updated list of election judges, complete with scheduling and work assignments. The Clerk’s office failed to provide updated information until a month after Election Day. Boulder’s records showed some improvement, but real problems remained: new records show that a total of 112 Democrat, 4 Green Party, 87 Republican and 78

Unaffiliated judges were appointed. Eleven of the Republican judges appointed were on the list that Ms. Hilliard submitted the week before the election. However, eight of the Republican judges Boulder appointed had changed their affiliations from Democrat to Republican within four months, two within 45 days. Of the unaffiliated judges eleven were recent voter registrations and six were recent changes from Democrat to Unaffiliated. Several of the judges with recent affiliation changes were serving in sensitive positions such as lead judge, signature verification and ballot resolution.

B. Boulder County violated Secretary of State signature verification rules and watcher rules.

1. *Boulder County displayed too many signatures at a time during signature verification, which inhibited watchers from challenging discrepant signatures.*

When a Colorado voter returns a mail ballot (either in person or through the postal service), election judges verify voter identity by comparing the voter's signature on the return envelope to the voter's signature in the voter database.¹² The signature is escalated to an additional review if there is a discrepancy. Accuracy is crucial. If election judges approve the signature, the ballot is separated from the envelope and counted. The signatures are not examined again, and the ballot signature is saved in the voter's file in the statewide voter database, for use in signature verification in future elections. Election rule 7.8.8 requires counties that use a signature capture device to compare the ballot signature to the SCORE signature to "display only one voter's signature at a time".

Secretary of State staff members observed that in Boulder, which uses a Bell & Howell machine to capture ballot signature images, screens displayed two different voters' mail ballot and voter-database signatures at the same time in the first level of signature verification. Displaying additional voter signatures simultaneously not only violated a clear election rule, but it was problematic because it allowed judges to approve twice as many signatures in the same amount of time. This speed increased the chance of a judge overlooking discrepant signatures, which increased the likelihood of counting an ineligible vote.

Boulder's dual-signature process also significantly decreased an election watcher's ability to effectively challenge a mail ballot. Watchers are permitted to challenge an individual's eligibility to vote, but they must do so by written oath.¹³ When a mail ballot is challenged, the challenge is handed to a bipartisan team of judges who must review the challenge under the statutory and regulatory framework to determine if the vote may be counted or if further action is needed.¹⁴ When judges move too quickly (such as when multiple voters' signatures are displayed at the same time) watchers are less able to see the voter's name in time to write it for the required oath.¹⁵ Without the name, the challenge is impossible. On election day, Boulder County election staff were notified that judges were verifying signatures too quickly for watchers to gather the necessary (and minimal) information to challenge a voter. But Boulder refused to follow state

¹² Section 1-7.5-107.3(1)(a) C.R.S. (2014); Rule 7.8.

¹³ Sections 1-9-201, 1-9-202, 1-9-207 C.R.S. (2014).

¹⁴ Section 1-9-207 C.R.S. (2014); Rule 9.2.

¹⁵ Though watchers are prevented from recording confidential voter information under Rule 8.5.2

regulations and refused to work with Secretary of State staff members to respect watcher rights in a non- disruptive way.

The Boulder Clerk’s behavior increased the risk of ineligible votes, and it severely undermined confidence in the quality of signature review. Indeed, the Boulder Clerk’s refusal to give watchers an opportunity to object to signatures compounded the problems caused by the Clerk’s systematic discrimination against Republican election judges.

2. *Boulder County improperly and unnecessarily prohibited watchers from observing the signature verification process.*

Watchers have a statutory right to “witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results, to challenge ineligible electors, and to assist in the correction of discrepancies.”¹⁶ The Secretary of State Election Rules provide further clarity, explaining that “[w]atchers must be permitted access that would allow them to attest to the accuracy of election-related activities... This includes personal visual access at a reasonable proximity to read documents, writings or electronic screens...”¹⁷ Election-related activities include “[w]itnessing the signature verification of mail ballot envelopes at close enough distance to verify or challenge the signature.”

Initially, Boulder County allowed watchers access only to the first signature verification review, where a team of judges compares the signature on a voter’s ballot to the voter’s signature in the statewide database. Discrepant signatures were escalated to a different team of judges, who compared the ballot signature to at least two older signatures included in the voter’s database file.¹⁸ Boulder County claimed watchers could not observe the second signature verification because a voter’s individual file contains confidential voter information, and the watcher could see some of that information.

But contrary to the Boulder Clerk’s initial claim, Colorado’s statutory framework for watchers allows them to observe “each step in the conduct of the election;” it does not create an exclusion for steps where a watcher might see confidential voter information.¹⁹

Following a personal visit by the Secretary of State, the Boulder Clerk agreed to allow watchers to view escalated signature research. It did this through the simple remedy of obscuring parts of judges’ computer screens with paper and tape. Boulder County should have followed this simple remedy – one used by many other Colorado Counties – from the very start of the signature review process.

At the same time, because watchers may be in a position to observe confidential voter information, Secretary of State Election Rules require watchers to affirm that they will not

¹⁶ Section 1-7-108 (3) C.R.S. (2014).

¹⁷ Rule 8.4.2.

¹⁸ Rule 7.8.2.

¹⁹ Section 1-7-108 (3) C.R.S. (2014).

disclose or record any confidential voter information.”²⁰ So it was improper for Boulder County election staff to prevent watchers from viewing the second and third reviews of signature verification, regardless of whether they obscured parts of the judges’ computer screens when allowing watcher access.

C. **Boulder County violated Secretary of State Election Rules by improperly concealing and limiting watcher access to the vote tally area.**

The Boulder County Clerk concealed the vote tally area while watchers were present and while staff entered and left the area. As stated in the signature verification explanation above, watchers have a statutory right to “witness and verify each step in the conduct of the election.”²¹ The Secretary of State Election Rules explicitly permit watchers to be personally present for election-related activities including “[o]bserving the tabulation process.”²² The rules acknowledge that by observing the tabulation process watchers may be in a position to observe vote totals before the general public, so watchers must also affirm that they will not “[d]isclose any results before the polls are closed.”²³ In addition to the affirmation, the Secretary of State Election Rules also forbid watchers from revealing any vote results before the polls have closed.²⁴

In the hour before the polls closed, watchers in Boulder County observed staff members entering and exiting the tally area, which was obscured by blinds at the time. When watchers asked Boulder election staff if they could enter the area to witness what was happening in the room, election staff refused to let watchers enter. The Boulder Clerk was unable to provide a justification for limiting watcher access to the vote tally area, in violation of Secretary of State Election Rules. At one point the Boulder County Election Director told watchers and a Secretary of State staff member that the blinds were down and no one but staff was allowed inside because “that’s the way we’ve always done it.” Alternately, she told watchers that they could not see the area because they would be able to see vote totals before 7 p.m. But watchers sign an affirmation that they will not disclose vote results before the close of polls, so it was improper for Boulder County election staff to prevent watchers from accessing the area.

Finally, The Election Director told watchers that they did not have a right to observe the tally area yet because no tabulation would occur before 7 p.m., according to Colorado law.²⁵ But this explanation directly contradicted her previous statement that watchers could not access the area specifically *because* tabulation was taking place and they were not permitted to see results before polls closed. The Boulder County Clerk cannot have it both ways, by providing excuses that directly contradict one another.

²⁰ Rule 8.5.2.

²¹ Section 1-7-108 (3) C.R.S. (2014).

²² Rule 8.4.2(a)(4).

²³ Rule 8.5.3.

²⁴ Rule 8.6.20.

²⁵ This comment was a mischaracterization of Colorado law. The relevant statute allows mail ballots to be counted as early as 15 days prior to the election, but prohibits releasing results until after 7 p.m. on Election Day. Section 1-7.5-107.5 C.R.S. (2014).

Ultimately, after several conversations with Secretary of State staff members on and off site, the Election Director agreed to lift the blinds and open the room to watchers before 7 p.m. Although direct intervention by the Secretary's office ultimately resolved this problem, yet again it seemed that rather than use simple means to follow Colorado laws and regulations, the Boulder Clerk instead opted to place multiple obstacles in the paths of citizens attempting to perform their roles as watchers or election judges.

D. Boulder County improperly limited Secretary of State staff access to ballot processing.

The Secretary of State has a duty to supervise the conduct of primary, general, congressional vacancy and statewide ballot issue elections in Colorado, and to enforce the provisions of Colorado's elections law.²⁶ Because the Secretary cannot be personally present in every county during an election, he has the discretion to send staff members in his place, "[t]o inspect, with or without the filing of a complaint by any person, and review the practices and procedures of county clerk and recorders, election commissions, their employees, and other election officials in the conduct of primary, general, and congressional vacancy elections."²⁷

After receiving numerous allegations of election misconduct in Boulder County, the Secretary sent a staff member to observe and supervise Boulder County's election conduct throughout Election Day. But Boulder County election staff failed to provide the Secretary's staff member with the necessary security pass to allow her to move freely through secure areas. Without the security pass the Secretary of State representative was unable to observe election conduct and ballot processing.

Instead, the Boulder Clerk assigned a "host" to grant access to election operations. Although the Clerk identifies people as "hosts" in fact they did not operate as a host, who entertains or provides facilities. Rather, they limited physical access, monitored movements, and reported all activities to the County Clerk. For example, the Secretary's staff member often had to wait for a Boulder County "host" to grant access to secure areas, and if a "host" was not available, the staff member could not gain access to election operations.

In addition, the Secretary staff member was not only constantly followed by the "host," but she was often confronted and detained by election judges and Boulder County election staff when she was not standing in designated "watcher areas." The County Clerk's behavior prevented the Secretary's representative from responding quickly and thoroughly to allegations of election misconduct, it escalated disagreements and conflict between a county and state agency, and it diverted state resources that could have been better spent elsewhere.

Ultimately, the Secretary seeks to perform his statutory duties in a cooperative manner, rather than resort to lawsuits and armed escorts. Indeed, cooperation between state and county officials is the norm, because election officials throughout the state generally agree that elections should be conducted in an open, transparent manner that builds trust in democracy.

²⁶ Sections 1-1-107(1)(a), 1-1-107(1)(b) C.R.S. (2014).

²⁷ Section 1-1-107(2)(b) C.R.S. (2014).

Unfortunately, the Boulder County Clerk repeatedly sought to avoid scrutiny, operate in an obscure manner, and hinder -- rather than cooperate with -- state officials.

E. Boulder County election staff treated election judges and watchers in a biased and inconsistent manner.

Boulder County repeatedly discriminated against and mistreated many citizens who chose to work as election judges and watchers. Election judges play a vital role in ensuring that elections are conducted legally, fairly, and with reliable results. Particularly in partisan elections, it is essential for bipartisan teams of judges to conduct election activities to safeguard the integrity of the process and the result. Colorado law and the Secretary of State Rules require counties to use bipartisan teams of judges for many election activities, including retrieving dropped-off ballots, escalated signature review, ballot duplication, counting mail ballots and reconciling damaged, spoiled or over-voted ballots.²⁸ Similarly, watchers play an important role in ensuring that elections are conducted openly, fairly, and reliably.

But Boulder County treated election judges and watchers in a way that seemed intentionally designed to minimize Republican judge and watcher participation. Secretary of State staff observed that watchers were typically accompanied by “hosts” while in secure areas (just like the staff member herself).²⁹ Again, these hosts did not facilitate the ability of watchers to carry out their duties, but instead they monitored, reported on, and restricted watchers’ movements.

And watchers were treated differently, in part depending on party affiliation. Many watchers were followed by “hosts” in unsecured areas. For example, the Secretary of State representative observed that some watchers were allowed to walk from the secured first floor area to the secured second floor area (through an unsecured staircase) without a “host,” but others were detained on one floor and told they were not allowed to go on the stairs by themselves, even though the staircase itself is not a secured area. These restrictions were enforced inconsistently against only a few watchers, demonstrating Boulder County’s bias against certain watchers.

Boulder County election staff also limited watcher access to signature verification by artificially constraining the signature verification space, which limited watcher participation and enabled election staff to treat watchers inconsistently and unfairly. Signature verification took place in a secure area of the first floor at the Boulder County Clerk and Recorder’s Office. The space is constrained by movable walls, and included three rows of workstations. In order for a watcher to observe signature verification, he or she was required to stand in an extremely narrow space, marked off by tape, behind each row of election judges. The space is so narrow that it is nearly impossible to stay behind the line at all times (particularly for anyone with size 9 or larger shoe), so nearly every watcher observed by the Secretary of State representative stood on or past the line at various times.

²⁸ Sections 1-7.5-107.3, 1-7.5-115, 1-7.5-201, C.R.S. (2014); Rule 7.5.4, Rule 18.3.2.

²⁹ Of the six watcher-host judges appointed in Boulder, three were affiliated as Democrats and three were unaffiliated.

A similar restriction was enforced to view the ballot sorter. Here, there was a 2' x 2' taped off box near the machine and watchers were not permitted to step outside the box. Such restriction was completely unnecessary.

The “hosts” and signature verification supervisor judges did not usually object to a watcher standing on, rather than behind, the line. But they strictly enforced the rule against watchers they considered troublesome. The Secretary’s staff member observed “hosts” and election staff enforcing the rule against specific watchers only.

Not only did the Boulder Clerk target specific watchers, but the highly constricted and awkward watcher viewing area was also an unnecessary and artificial hindrance to watcher participation. The signature verification station was sited next to a large open space in the secure area, apparently used for storage and as a break table. The Boulder Clerk could easily have expanded the area used for signature verification, which would have made it much easier to accommodate watcher participation.

F. The Boulder County Clerk failed to verify signatures of ballots submitted electronically by military and overseas voters.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) is a federal law that establishes uniformed-service and overseas Americans’ right to receive and submit a ballot electronically.³⁰ UOCAVA voters who chose to vote by email must scan, sign, and return their ballot as an attachment.³¹ When a county receives a UOCAVA ballot by email, Secretary of State Election Rules require the county to verify the voter’s signature in the same manner as other mail ballots.³² After signature verification, the rule requires a bipartisan team of judges to duplicate the UOCAVA ballot, so that it may be counted by an automated counting machine.³³

In Boulder, the UOCAVA ballots were downloaded and printed from a computer on the second floor of the County Clerk and Recorder’s building. A Secretary of State staff member was present on Election Day and observed signature verification throughout the day, duplication of UOCAVA ballots that had been downloaded the previous evening in the afternoon, and downloading and printing UOCAVA ballots that were received on election day. Duplication of UOCAVA ballots took place in the same large secured room on the second floor, where ballots were separated from their envelopes. Signature verification took place on the building’s first floor secured area. When the Secretary of State staff member asked Boulder County election staff to explain what would happen to the UOCAVA ballots after they were downloaded and printed, she was told that they would be duplicated on the second floor.

Boulder County election staff now claim that UOCAVA ballots underwent signature verification after printing but before duplication. But this contradicts what the on-site Secretary of State staff member observed during Election Day. The staff member did not observe UOCAVA ballots in signature verification and was not able to confirm that these ballots were

³⁰ Sections 1-8.3-104; 1-8.3-110; 1-8.3-113 C.R.S. (2014).

³¹ Rule 16.2.1(d); 16.2.3.

³² Rule 16.2.6.

³³ Rule 16.2.6.

verified before duplication. The Secretary of State remains concerned that the Boulder Clerk failed to process electronically submitted UOCAVA ballots through signature verification and instead sent them directly to duplication after they were downloaded and printed.

CONCLUSION

The Secretary will accept the Boulder County returns, because they are sufficiently explicit to determine the number of votes cast.

Although the returns submitted by the Boulder County Clerk and Recorder meet minimum statutory requirements for acceptance, the Boulder County Clerk and Recorder did not run an election that met Colorado's legal requirements. Furthermore, the Clerk did not conduct the election in an open, transparent manner that merits confidence and trust. The Boulder County clerk violated state law in several ways:

- She systematically discriminated against Republican election judges, by excluding people nominated by the Republican Party, and even appointing people not registered to vote;
- She prevented watchers from having a meaningful opportunity to observe and verify the signature review process, created an artificially cramped area for them to operate in, restricted watcher access to secondary signature review (for most of the election period), unnecessarily barred watchers from the vote tabulation area, and targeted certain watchers for discriminatory treatment;
- She appointed election staff members to monitor watchers, restrict their movements, and report on their activities. Indeed, during the election she treated one observer sent by the Secretary's office in the same manner; and
- She failed to verify signatures for military and overseas voters who submitted their ballots electronically.

Although no election official runs an absolutely perfect election, as public servants nearly all county clerks make good faith efforts to follow all laws and operate in a fair and transparent manner -- even in counties marked by substantial political polarization. By contrast, the Boulder County Clerk and Recorder repeatedly failed to follow legal requirements, and rather than seek cooperation she often placed obstacles in the path of citizen participation and state oversight.

In the future, the Secretary of State's office will work with the Boulder County Clerk and Recorder to design and implement processes that adhere to state law, and build trust and confidence in the integrity of Colorado elections.